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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. [redacted] 72

ISADORE PARZOW, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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UNITED STATES OF AMERICA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to the United States Court of Appeals for the Fourth Circuit to review the judgment of that court entered February 5, 1968, affirming petitioner's conviction under a two-count indictment charging him with conspiracy and a substantive violation of 18 U.S.C. § 1952. Petitioner was sentenced to two years imprisonment.

OPINIONS BELOW

The opinion of the Court of Appeals has not yet been officially reported but is set out in Appendix B, *infra*, pp. 19-22. The District Court did not write or deliver an opinion.

JURISDICTION

The judgment of the Court below was entered on February 5, 1968. A timely petition for rehearing *en banc* was denied on March 11, 1968. The Chief Justice granted an extension of time to file this petition to April 30, 1968. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED[1]

1. Is a defendant entitled to have the prospective jury panel asked on *voir dire* whether the fact that one of the defendants is Jewish would make it more difficult to render a verdict in his favor.

2. Is it a violation of defendant's Fourth and Fifth Amendment rights to allow government agents to make affirmative misrepresentations for the purpose of securing incriminating evidence.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions are the Fourth and Fifth Amendments. The statutory provisions are Title 18 U.S.C. § 371, § 1952 and §§ 18.1-278 and 18.1-279 of the Virginia Code. The above statutes and provisions are set out in Appendix A, *infra*.

---

[1] No question is raised concerning illegal electronic surveillance, on the assumption that the Solicitor General will, if there was any, disclose its presence. See Petition for Rehearing, *Kolod v. United States*, No. 133, October Term, 1967.

STATEMENT OF THE CASE

This petitioner, together with John P. Parrish, was indicted by a grand jury in the Eastern District of Virginia, Alexandria Division, in two counts, one of conspiring to violate 18 U.S.C. § 1952 and the second of violating that statute. Trial was held, and petitioner and Parrish were both convicted on each count. Parrish is also petitioning this Court for a writ of certiorari.

Isadore Parzow, a prominent Washington, D. C. builder, together with his partners, Leo Goodwin, Jr. and James Juliano, operating as Builders and Developers Corporation, acquired approximately 12.42 acres of land near Annadale, within the Mason Magisterial District in Fairfax County. Their purpose was to secure rezoning of the land in question from RE-0.5 (½ acre residential) to C-D in order to permit the construction of a neighborhood shopping center at the site. The land in question was located at the intersection of Braddock Road and Backlick Road and the shopping center which was ultimately built became known as the Bradlick Shopping Center.

Builders and Developers Corporation secured the services of Lytton H. Gibson, Esq., a prominent northern Virginia zoning attorney to represent them in proceedings before the Board of Supervisors of Fairfax County, the Board which has the final authority on rezoning applications in the county. On behalf of the applicants, Mr. Gibson appeared before the Board at the time scheduled for the public hearing and noted that the particular intersection in question had been the subject of several recent rezoning applications, each of which had been denied, but that "here was something entirely different from what the Board had ever had proposed for the area"; that there was "divided sentiment among the people who live in the area"; that "he had a petition signed by more than 100 people in the neighborhood favoring" the application; that at least one of those residents who had consistently opposed commercialization of the property now supported this application; that sewer, water and drainage

facilities were adequate. Citizens spoke for and against the application. Both the County's professional Planning Staff and the Planning Commission recommended against the requested rezoning, but the Board, by a vote of 4-3, granted the application. Supervisor John P. Parrish, then representing the Mount Vernon District, voted with the majority.

John Parrish and Isadore Parzow had known each other for many years, at least since 1957 when Juliano and Parzow, a building partnership, had offices in Alexandria in the same building in which Parrish had his law offices. Parrish and Arban, the name of the law partnership in which John Parrish was then engaged, had handled the settlement work when Parzow and his associates acquired the Bradlick parcel of land in 1961.

Isadore Parzow was also active in other businesses in the Washington area, among them a corporation known as Kent Washington, Inc. He and Juliano were on the Board of Directors and Parrish, through an organization of his known as Commonwealth Greeting Service, had previously made a small investment in Kent Washington stock. There was no connection between Kent Washington, Inc. and the Bradlick Shopping Center. Parrish and Parzow had discussed the potential of Kent Washington from time to time in 1961 and in 1962, Parzow urging the purchase of more stock. Finally, Parrish borrowed $5,000 from Isadore Parzow in late July of 1962, executed a bearer note the same day, and Parzow, operating through his brother Morris Parzow, an employee of the brokerage house of Balogh & Co., ordered an additional 1,000 shares of Kent Washington stock for John Parrish. Parrish received the stock, in ten 100-share certificates, and endorsed them over to Parzow as collateral for the loan. It was this transaction which led to the charges against Parzow and Parrish—notwithstanding John Parrish's unequivocal testimony:

> ". . . A. I don't know anything about the charge except the indictment. I never accepted a bribe in my life.

Q. Have you ever been offered one?
A. No, sir.
Q. Did Mr. Parzow ever offer you one?
A. No, sir.
Q. Did you ever accept anything from Mr. Parzow for your favorable vote on this rezoning?
A. No sir, not from Mr. Parzow or anyone else."

REASONS FOR GRANTING THE WRIT

I.

Petitioner Parzow's Proposed "Voir Dire" Questions Seeking To Uncover Evidence of Anti-Semitism Should Have Been Propounded.

In a pretrial order entered on February 14, 1967, six days prior to trial, the trial court ruled:

> "Counsel for the defendants and the Government are directed to advise the Court in writing on or before 9:00 a.m., February 20th [the trial date] of all questions they would like propounded to the jury."

Pursuant to that order, counsel for petitioner Parzow, on February 17, 1967, filed a series of proposed questions, among them:

> "22. Would the fact that one of the defendants is Jewish make it more difficult for you to render a verdict in his favor?
>
> 23. Would any of the prospective jurors be more inclined to find the defendants guilty because one of them is Jewish?"

The trial court conducted the *voir dire* examination and at the conclusion asked counsel if there were other questions to be asked. These questions were specifically called to the court's attention and specifically denied. The petitioner Parzow is Jewish, and the question was entirely appropriate under the circumstances.

As long ago as *Aldridge v. United States*, 283 U.S. 308 (1931), this Court had occasion to pass upon the propriety of inquiring of the jury on *voir dire* with respect to any racial, *religious*, or nationalistic bias or prejudice. In that case, the United States District Court for the District of Columbia (then the Supreme Court for the District of Columbia) had refused to permit the jury to be interrogated as to any personal bias resulting from the fact that the defendant was a Negro. This Court held, 283 U.S., at 311, that "the propriety of such an inquiry has been generally recognized." Continuing, this Court, at 283 U.S. 312-13, stated:

> "The right to examine the jury on the voir dire as to the existence of a disqualifying note of mind has been upheld with respect to other races than the black race *and in relation to religious* and other prejudices of a serious character . . .
>
> "The argument is advanced on behalf of the Government that it would be detrimental to the administration of the law in the courts of the United States to allow questions to jurors as to racial or religious prejudices. We think it would be far more injurious to permit it to be thought that persons entertaining a disqualifying prejudice were allowed to serve as jurors and that inquiries designed to elicit the effect of disqualification would be barred. No surer way could be devised to bring the processes of justice into disrepute.
>
> "We are of the opinion that the ruling of the trial court on *voir dire* was erroneous and the judgment of conviction must for this reason be reversed." (Emphasis supplied.)

The case has regularly been followed since that time. See, for example, *Frasier v. United States*, 267 F.2d 62, 66 (1st Cir. 1959); *Smith v. United States*, 262 F.2d 50, 51 (4th Cir. 1958), and see the cases gathered in *Annotation*, 54 A.L.R.2d 1204, *et seq.*

It is very clear that the permissible line of questioning goes far beyond simply racial prejudice, it having been held both

in *Aldridge v. United States* and elsewhere that inquiry with respect to religious prejudice is also proper. See, for example, *United States v. Daily*, 139 F.2d 7, 9 (7th Cir. 1943); *Potter v. State*, 86 Tex. Crim. App. 380, 216 S.W. 886 (1919); *Horst v. Silverman*, 20 Wash. 233, 55 Pac. 52 (1898); and see *Annotation*, 54 A.L.R.2d, at 1215, *et seq.*

Lest there be any doubt, this Court in *Swain v. Alabama*, 380 U.S. 202, 220-21 (1965), laid it to rest:

> "The essential nature of the peremptory challenge is that it is one exercised without a reason stated, without inquiry and without being subject to the court's control . . . While challenges for cause permit rejection of jurors on a narrowly specified, provable and legally cognizable basis of partiality, the peremptory permits rejection for a real or imagined partiality that is less easily designated or demonstrable . . . It is often exercised upon the 'sudden impression and unaccountable prejudices we are apt to conceive upon the bare looks and gestures of another, ' . . . upon a juror's 'habits and association' . . . or upon the feeling that 'the bare question [a juror's] indifference may sometimes provoke a resentment', . . . It is no less frequently exercised on grounds normally thought irrelevant to legal proceedings or official action, namely, the race, *religion*, nationality, occupation or affiliations of people summoned for jury duty. For the question a prosecutor or defense counsel must decide is not whether a juror of a particular race or nationality is in fact partial, but whether one from a different group is less likely to be. It is well known that *these factors are widely explored during the voir dire*, by both prosecutor and accused, . . . *This Court has held that the fairness of trial by jury requires no less. Aldridge, supra.* Hence, veniremen are not always judged solely as individuals for the purpose of exercising peremptory challenges. Rather they are challenged in light of the limited knowledge counsel has of them, which may include their group affiliations, in the context of the case to be tried." (Footnotes omitted.) (Emphasis supplied.)

While this point was briefed and argued before the Court of Appeals, the opinion of the court was silent. In order to exercise the freedom in utilizing peremptory challenges which the defendant must have, the necessary information must be present. Such information necessarily and properly included that sought by counsel for the defendant Parzow.[2]

II.

The Motion To Suppress Should Have Been Granted.

Petitioner Parzow filed a pre-trial Motion to Suppress which was heard in common with similar motions filed by various defendants in *United States v. Nathan Wechsler, et al.*, No. 4375 and *United States v. Alan I. Kay, et al.*, No. 4383 (companion cases in the United States District Court involving similar violations). A pattern developed during that hearing which was accurately summarized by the court:

> "The Court: Haven't you get it very clearly from the head here that it [Metro Projects] was set up for the purpose of investigating rumors and alleged corruption and bribery and every other name you got out of Mr. Joyce in Northern Virginia? That is what he said, wasn't it? I don't know how you can go any stronger.
>
> * * * *

---

[2]The defendant is not required to make any showing of prejudice on this point. *Ballard v. United States*, 329 U.S. 187, 195 (1946) ("But reversible error does not depend on a showing of prejudice in an individual case . . . . The injury is not limited to the defendant—there is injury to the jury system, to the law as an institution, to the community at large, and to the democratic ideal reflected in the processes of our Courts."); *Allen v. State*, 110 Ga. App. 56, 137 S.E.2d 711 (1964); and see Note, *The Defendant's Challenge to a Racial Criterion in Jury Selection: A Study in Standing, Due Process and Equal Protection*, 74 Yale L.J. 919 (1965); see also *Rabinowitz v. United States*, 366 F.2d 34, 37 (5th Cir. 1966).

"By Mr. Batchelor: Was this particular group that you were with unlike any other group you served with in the Internal Revenue Service?

"The Court: What difference does that make? Won't you stipulate, Mr. Joyce. I mean I want to fully develop this, that this was a special group set up to investigate alleged failure to file income tax returns, allegedly coming from payoffs, bribery, extortion, everything you want to call it, is that right?

"Mr. Joyce: That is correct.

"The Court: All right. You can't get any more. That is what it was set up for.

"Mr. Batchelor: That is the stipulation in the record at this time?

"The Court: Yes, sir, that is. I always did understand, from yesterday, that is what they were out to do. You gentlemen know it as well as I do. They were out to find all the evidence they could find in reference to people that they had under suspicion of violating the law and they were doing it by seeing whether they were reporting income on it. Now, if they can't do that, let's get to it legally."

There was a further stipulation.

"The Court: To save all of you gentlemen a lot of trouble, the government may argue all they want to that is all they are interested in, but they won't convince me they were not interested in what Mr. Joyce said. If that is illegal, we can get to it. *They had strong rumors, they had reports from the FBI, Mr. Joyce said, of crookedness going on in Fairfax County, payoffs, there was alleged bribery, both by the FBI and rumor, and that is what was said, and they were auditing tax returns of public officials, including others not indicted, for the purpose of seeing whether or not this alleged illegally obtained money was declared on their income tax.* I don't think there is any doubt about that is what the evidence shows conclusively. Now, if they can't do it, that is one thing. So why do we go through all of

this pinning down to niceties of whether this boy was engaged in an audit or whether he was engaged in getting the evidence? It is clear that the auditors turned their information over to the coordinator or the supervisor, that is what they had him for. The supervisor discussed it, assimilated it. When they got all through with Mr. Joyce, it is clear they went over it with a fine-tooth comb to evaluate it to see if they had enough to present any indictments. They reached the conclusion that they did have enough in some cases, and they did present some indictments and here we are.

Now, that is, reduced, in a nutshell, exactly what happened.

"Mr. Joyce: That is exactly it.

"The Court: Will you stipulate that is what happened?

"Mr. Joyce: Yes, Your Honor, have been willing to do that for two days.

"The Court: All right. The government now stipulates exactly what happened is what the Court finds from this evidence." (Emphasis supplied.)

A stipulation was filed by petitioner Parzow showing that he too, was subjected to the same conduct.

In an order entered on February 14, 1967, the court held:

"The motion of each of the defendants for suppression of evidence obtained by agents of the Internal Revenue Service during the tax investigation is denied, without prejudice to the right of each of the said defendants to review their said motion as and when any specific piece of evidence is tendered during the trial."

Internal Revenue Agent Benjamin Sondak did testify at the trial and did testify with respect to specific information, both documentary and oral, secured from the petitioner Parzow. This testimony was admitted after a specific defense objection, made at the bench in accordance with leave granted in the foregoing Order, was denied.

It is well established that affirmative misrepresentations made by Government agents for the purpose of securing incriminating evidence violate the Fourth and Fifth Amendments and require the suppression of all proof obtained thereby. *Gouled v. United States*, 255 U.S. 298, 305-06 (1921).

In accordance with the principles of the *Gouled* case, the suppression of evidence obtained by false or misleading promises of immunity is required. *Smith v. United States*, 348 U.S. 147, 151 (1954); *Shotwell Mfg. Co. v. United States*, 371 U.S. 341, 347 (1963). The promise of immunity need not be explicit. As explained in *United States v. Sclafani*, 265 F.2d 408, 415 (2d Cir. 1959):

> "Of course, the government's agents may not act so as to obscure a warning inherent in their request for permission to search, as by assuring a taxpayer in order to quiet his apprehensions, that no proceedings can or even will eventuate, and then rely successfully on the consent so procured."

The same result necessarily flows from misrepresentation on the part of Government agents regarding the purpose of their investigation. *Application of Bodkin*, 165 F. Supp. 25, 29 (EDNY 1958) (Evidence "induced or procured by the furtive and surreptitious actions of the Special Agents are tainted with illegality, and should be suppressed, as likewise should all evidence secured solely from leads obtained thereby."); *United States v. Guerrina*, 112 F. Supp. 126, 130 (ED Pa. 1953), *mod.*, 126 F. Supp. 609 (ED Pa. 1955) ("The dividing line between proper investigation procedures and those which encroach upon constitutionally guaranteed rights is shadowy and ill-defined, but the device here used [falsely representing a criminal investigation to be a civil audit] places itself clearly on the wrong side of that line."); *United States v. Ong Goon Sing*, 149 F. Supp. 267 (SDNY 1957) (Documents obtained through misrepresentations relating to the purpose for which they were sought and the nature of the investigation suppressed.). See *Austin v. United States*,

297 F.2d 356 (4th Cir. 1961), *vacated on other grounds*, 353 F.2d 512 (4th Cir. 1962)[3]; *United States v. Wolrich*, 129 F. Supp. 562 (SDNY 1955). *Turner v. United States*, 222 F.2d 926, 931 (4th Cir. 1955), is not inconsistent with these authorities since in *Turner* there was no promise of immunity, express or implied, and no misrepresentation as to the purpose of the agents' investigation.

The critical question in these cases is whether, in the performance of their duties, there was any *affirmative* misleading. *United States v. Wheeler*, 275 F.2d 94 (3d Cir. 1960); *United States v. Achilli*, 234 F.2d 797, 806 (7th Cir. 1956), *aff'd*, 353 U.S. 373 (1957); *United States v. Frank*, 151 F. Supp. 864, 865 (WD Pa. 1956) ("It need not be doubted that defendant's motion should be granted if defendant's records were obtained through fraud and deceit."), *aff'd*, 245 F.2d 284 (3d Cir. 1957); *Palmisano v. United States*, 226 F. Supp. 562 (NDNY 1963); *United States v. Turzynski*, 1967 CCH, ¶ 9486 (ND Ill. 6/2/67); *United States v. Kingry*, 19 A.F.T.R.2d 745 (N.D. Fla. 1/6/67); and see Lipton, *Constitutional Rights in Criminal Tax Investigations*, 53 A.B.A.J. 517 (1967).

Deceit practiced by representatives of the United States government has been condemned and evidence obtained thereby suppressed in other contexts as well. Where officers, in order to secure entry to make an arrest, affirmatively misrepresent the purpose of their mission, such entry is unlawful and evidence obtained thereby may not subsequently be used by the government. *Wong Sun v. United States*, 371 U.S. 471, 482-83 (1963); *Gatewood v. United States*, 309 F.2d 789 (D.C. Cir. 1953). And, confessions extracted by means of deception and trickery uniformly have been held inadmissible. *Lynumm v. Illinois*, 372 U.S. 528 (1963); *Rogers v. Richmond*, 365 U.S. 534, 544 (1961); *Spano v. New York*, 360 U.S. 315 (1959); *Leyra v. Denno*, 347 U.S. 556 (1954).

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[3] As to the continuing validity of *Austin*, see *Smith v. Katzenbach*, 351 F.2d 810, 815, n.5 (D.C. Cir. 1965).

It is clear that what was here involved was a massive search for governmental corruption, conducted by Internal Revenue Agents (*e.g.* Sondeck) who reported the results of their "routine audits" to a Special Agent (McElroy) who, in turn, conferred with Mr. Joyce, a representative of the Department of Justice on the best way to prosecute. This subterfuge is constitutionally impermissible.

Under these precedents, any statements as well as physical objects and all other evidence derived from such statements or papers must be suppressed. *Silverthorne v. United States*, 251 U.S. 385, 392 (1920); *Wong Sun v. United States, supra*. It matters not whether the declarations and papers were exculpatory or incriminating, *Wong Sun v. United States, supra*, at 487; *Miranda v. Arizona*, 384 U.S. 436, 476-77 (1966), and since the government's knowledge of the very existence of the materials which were presented to the grand jury was gained through its unlawful conduct, the fact that such documents were the subject of a later subpoena duces tecum is irrelevant. *Silverthorne Lumber Co. v. United States, supra; Wong Sun v. United States, supra.*

The petitioner Parzow's pre-trial Motion to Suppress should have been granted. Had it been, the government might have been able to go forward with evidence free of taint.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED:

A. Constitutional Provisions

Fourth Amendment

(Security from Unwarrantable Search and Seizure)

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probably cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment

(Rights of Accused in Criminal Proceedings)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment

(Right to Speedy Trial, Witnesses, etc.)

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascer-

tained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

B. Statutes

Title 18, United States Code:

Section 2

2. Principals

(a) Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commissions, is a principal.

(b) Whoever causes an act to be done, which if directly performed by him would be an offense against the United States, is also a principal and punishable as such.

Section 371

§ 371. Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

Section 1952

§ 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics, or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

(c) Investigations of violations under this section involving liquor or narcotics shall be conducted under the supervision of the Secretary of the Treasury.

Code of Virginia:

Section 18.1-278

§ 18.1-278. Bribes to officers or candidates for office.—If any person corruptly give, offer or promise to any executive, legislative or judicial officer, sheriff or police officer, or to any candidate for such office, either before or after he shall have taken his seat, any gift or gratuity, with intent

to influence his act, vote, opinion, decision or judgment on any matter, question, cause or proceeding, which is or may be then pending, or may by law come or be brought before him in his official capacity, he shall, upon conviction, be confined in the penitentiary not less than one nor more than ten years. This section shall also apply to a resident of this State who, while temporarily absent therefrom for that purpose, shall make such gift, offer or promise and thereafter return to this State.

Section 18.1-279

§ 18.1-279. Acceptance thereof by Officer.—If any executive, legislative or judicial officer, sheriff or police officer, or any candidate for such office, accept in this State, or if, being resident in this State, such officer or candidate shall go out of this State and accept and afterwards return to and reside in this State, any gift or gratuity or any promise to make a gift or do any act beneficial to such officer or candidate under an agreement, or with an understanding, that his vote, opinion or judgment shall be given on any particular side of any question, cause or proceeding which is or may be by law brought before him in his official capacity or that in such capacity he shall make any particular nomination or appointment or take or fail to take any particular action or perform any duty required by law, he shall, upon conviction, be confined in the penitentiary not less than one nor more than ten years and shall forfeit his office and be forever incapable of holding any post mentioned in § 2-26. The word candidate as used in this and the preceding section shall mean anyone who offers himself or is put forward by others as a suitable person or an aspirant for such office.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11,364.

United States of America,
Appellee,

versus

Isadore Parzow,
Appellant.

No. 11,398.

United States of America,
Appellee,

versus

John P. Parrish,
Appellant.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT ALEXANDRIA. OREN R. LEWIS, DISTRICT JUDGE.

(Argued November 7, 1967. Decided February 5, 1968.)

Before HAYNSWORTH, Chief Judge, and WINTER and CRAVEN, Circuit Judges.

Thomas R. Dyson, Jr., (Raymond W. Bergan and Williams & Connolly on brief) for Appellant Parzow, and Walter E. Rogers (Frank W. Hardy and George R. Humrickhouse, and Williams, Mullen & Christian on brief) for Appellant Parrish, and John D. Schmidtlein, Assistant United States Attorney, (C. V. Spratley, Jr., United States Attorney, Roger T. Williams, Assistant United States Attorney, and Edward T. Joyce, Attorney, Department of Justice, on brief) for Appellee.

CRAVEN, Circuit Judge:

This case, like *United States* v. *Wechsler*, ...F.2d..... (4th Cir. 1967), decided today, involves the bribery of a member of the Board of Supervisors of Fairfax County, Virginia, in violation of 18 U.S.C. § 1952. John P. Parrish, an attorney and member of the Board of Supervisors, and Isadore Parzow, a real estate developer, were convicted under a two-count indictment of conspiring to violate and of substantively violating the statute. From the evidence and under proper instructions, the jury could have found that Parzow and Parrish made an agreement whereby Parrish voted in favor of re-zoning a tract of land to permit its use as a shopping center. In exchange for that vote Parzow bought 1,000 shares of Kent-Washington stock for $5,250.60 from a broker in Washington, D.C. and caused the certificates to be mailed to Parrish in Virginia. Parrish accepted delivery of the shares by signing a receipt and returned it by mail to the broker in the District of Columbia. As we more fully explained in *Wechsler*, *supra*, facts such as these contain all the elements necessary to support the convictions for conspiracy and we affirm.[1]

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[1] Since identical and concurrent sentences were given to both defendants on each count, we find no need to consider problems raised in connection with the

The appellants urge that a charge of conspiracy to commit bribery cannot be maintained when the only persons involved are the persons who give and who receive the bribe. They place great reliance on cases which hold that where cooperative action is necessary to commit the substantive offense, a preliminary agreement between the same parties to commit the offense cannot be punished as a conspiracy,[2] but their reliance is misplaced. We have no occasion now to question the thrust of those cases for, as we pointed out in *Wechsler*, the defendants are not charged with a conspiracy to commit bribery, but rather with a conspiracy to violate § 1952.

We have given careful consideration to the other assignments of errors and find nothing in any of them to justify reversal or a new trial. We have no doubt that the use of facilities in interstate commerce was sufficiently related to the carrying on of the unlawful activity. *See, United States* v. *Wechsler, supra* at ..... n.4; *United States* v. *Wingo,* ..... F.2d ..... (6th Cir. 1967); *United States* v. *Hawthorne,* 356 F.2d 740, 742 (4th Cir. 1966). Nor do we think that the trial court improperly refused the motion for change of venue. *See, Rees* v. *Peyton,* 341 F.2d 859 (4th Cir. 1965). And we are convinced that the indictment was sufficient to satisfy the principles established in *Brokaw* v. *United States,* 368 F.2d 508 (4th Cir. 1966); *United States* v. *Chunn,* 347 F.2d 717 (4th Cir. 1965); *United States*

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substantive counts. *Hirabayashi* v. *United States,* 320 U.S. 81, 85 (1943); *Gorin* v. *United States,* 312 U.S. 19, 33 (1941); *Brooks* v. *United States,* 267 U.S. 432, 441 (1925); *United States* v. *Wechsler,* ..... F.2d ..... (4th Cir. 1967).

[2] *E.g., Gebardi* v. *United States,* 287 U.S. 112 (1932) (Mann Act); *United States* v. *Holte,* 236 U.S. 140, 145 (1915) (bigamy and dueling); *United States* v. *N.Y. Central R.R.,* 146 Fed. 298 (S.D.N.Y. 1906) (bribery); *United States* v. *Dietrich,* 126 Fed. 664 (D. Neb. 1904) (bribery).

v. *Martell*, 335 F.2d 764 (4th Cir. 1964); and *Finn* v. *United States*, 256 F.2d 304 (4th Cir. 1958).[3]

Affirmed.

WINTER, Circuit Judge, concurring:

I do not find in this case the infirmity which caused me to dissent in United States v. Wechsler, et al. (No. 11,331, etc.), decided this day.

Accordingly, I join in the judgment of the Court and the opinion in support thereof.

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[3] Because of the bill of particulars furnished in this case, *United States* v. *Chase*, 372 F.2d 453 (4th Cir. 1967), is not in point. *See also, Cohen* v. *United States*, 378 F.2d 751 (9th Cir. 1967).